

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING
JANUARY 26, 2005**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, January 26, 2005 at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Ray Dwyer

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Town of Merton Board of Adjustment
James Smessaert, BA04:102, petitioner
Atty. Dereck Brower, BA04:102, representing the petitioners
Jim Kueht and Christina Binn, BA04:102, neighborhood residents
Pauline Jaske, BA04:102, neighborhood resident
Patrick Reardon, BA04:100, petitioner
James and Teresa Remondino, BA04:101, petitioners
Jeff and Maria Kucharski, BA04:101, neighbors of the petitioners
Jim Burns, BA04:101, neighborhood resident

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I make a motion to approve the Summary of the Meeting of January 12, 2005.*

The motion was seconded by Mr. Dwyer and carried with four yes votes. Mr. Bartholomew abstained because he was not present at the meeting of January 12, 2004.

NEW BUSINESS:

BA04:102 JAMES AND NANCY SMESSAERT

Mr. Dwyer *I move to deny the request of the Smessaerts in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons outlined by the staff, with the addition that this matter shall be*

referred to the staff for enforcement and it should be noted that the approval of this request would be inconsistent with the previous Board of Adjustment action.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

Although the requested special exception from the accessory building floor area ratio requirement does not require the demonstration of an unnecessary hardship and the floor area ratio requirement is not enforced on legal non-conforming lots of record, except as may be set forth in conditions of other variances, the addition of finished floor area on the upper level of the detached garage and the addition of a permanent staircase to that upper level also requires a variance to remodel a non-conforming structure in excess of 50% of its fair market value, which does require demonstration that denial of the variance would result in an unnecessary hardship. The petitioners are also required to demonstrate that denial of the requested guesthouse variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

It has not been demonstrated that denial of the requested variances would result in an unnecessary hardship. Denial of the requested variances would not prevent the owners from using the property for a permitted purpose, i.e. for a single-family residence, and it is not unnecessarily burdensome if a guesthouse is not permitted. In addition, personal circumstances of the owners cannot be used as reasons to grant variances and hardships used to justify the granting of variances must not be self-created or financial in nature. Further, there are no physical conditions on the property to justify granting the requested variances, which are contrary to the purpose and intent of the Ordinance. Finally, although the previous Board of Adjustment approval (BA02:067), which included a condition that the garage may be only one story, was made when the definition of an unnecessary hardship was that denial of the variance would result in no reasonable use of the property, it is felt that limiting a detached garage to only one story, and thus not permitting a permanent staircase to an upper level, is not unnecessarily burdensome and that condition should be upheld.

BA04:100 PATRICK AND MARY REARDON

Mr. Tarmann

I move to approve the request in accordance with the staff's recommendations, as stated in the Staff Report, for the reasons stated in the Staff Report justifying the granting of the variances.

The motion was seconded by Mr. Dwyer and carried with four yes votes. Mr. Schultz abstained because he is the architect for the proposed remodeling.

The staff's recommendation was for approval, with the following conditions:

1. The addition must extend no closer to the lake than the existing residence.
2. The existing wood deck on the east side of the residence, which conflicts with the proposed addition, shall not be replaced, except as noted below. The wood deck on the lake side of the residence may be extended across the lake side of the addition, provided it does not extend more than 4 ft. towards the lake from the south wall of the residence. If desired, the deck may be extended to wrap around the east side of the residence, provided it does not extend closer than 8 ft. to the east lot line.
3. The addition must be at least 13.33 ft. from the east lot line, as measured to the outer edge of the wall, with an overhang not to exceed two (2) ft. in width.
4. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a zoning permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed addition and any proposed deck extensions, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed expansion, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
7. A detailed cost estimate for the proposed remodeling and expansion must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
8. No new retaining walls will be permitted within 75 ft. of the lake, unless the Planning and Zoning Division staff determine that they are necessary for erosion and sediment control. No new retaining walls will be permitted within 5 ft. of the side lot line, without approval from the Town of Merton Plan Commission and the Waukesha County Park and Planning Commission.
9. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The residence is a modest-sized home, smaller than other homes in the neighborhood, and it would be unnecessarily burdensome if it were not permitted to be expanded. The large kettle in the center of the property is a physical feature that creates a hardship for any expansion of the residence. The small level area on the north side of the residence, between the residence and the kettle, is the location of the existing septic system and also the best location for a replacement septic system. Therefore, that area is not suitable for an addition to the residence. The only remaining area that is suitable for an addition to the residence is the area to the east of the residence, which is the site of the proposed addition. Replacing the existing residence with a larger residence farther from the lake is not a viable alternative to enlarging the existing residence, given the location of the large kettle in the center of the property.

The proposed addition will result in a reasonable use of the property, in the form of an expanded single-family residence, which is in keeping with other development in the area. The proposed addition will extend no closer to the lake than the existing residence and there is an existing deck, with approximately the same footprint as the proposed addition, in the area where the addition will be located. Therefore the addition will not increase the amount of impervious surface near the lake and is not contrary to the public interest. Further, the proposed addition will not adversely affect any of the neighboring properties. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA04:101 JAMES AND TERESA REMONDINO

Mr. Bartholomew

I make a motion to approve the staff's recommendations, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for denial of the requested variance to allow the petitioners to attempt to obtain a Conditional Use Permit for an "in-law unit" not contained within a single-family residence and denial of the requested variance to permit the garage/guesthouse building to be used as a guesthouse.

The staff's recommendation was for denial of a special exception from the offset requirement and denial of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the floodplain setback requirement for the proposed remodeling of the garage/guesthouse building. However, the staff's recommendation was for approval of a variance to remodel a non-conforming structure in excess of 50% of its fair market value, should such a variance be necessary, to permit the garage/guesthouse to be converted into a detached garage, with a storage area in the exposed lower level, subject to the following conditions:

1. The 4.6 ft. x 13.4 ft. extension on the south side of the detached garage/guesthouse and the one-story extension on the basement level of the detached garage, which extends approximately 8 ft. towards the lake beyond the upper floor of the detached garage/guesthouse, must be removed.

2. The detached garage/guesthouse must be converted to a garage, with only a storage area in the exposed lower level. The detached garage may not contain a living unit or a guesthouse and all plumbing must be removed from the interior of the building.
3. This approval is valid only for conversion of the existing structure into a detached garage. Construction of a new detached garage will require a new application for a zoning permit and a new application for the necessary variances.

The staff's recommendation was for approval of a special exception from the offset requirement and variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the floor area ratio requirement, to permit the single-family residence to be remodeled and expanded, as proposed, subject to the following conditions:

1. The non-conforming detached garage/guesthouse must be removed from the property or reconfigured and converted to a garage, with only a storage area in the exposed lower level, as set forth above. This may be done concurrently with remodeling of the single-family residence, but it must be completed within twelve months of the issuance of a zoning permit to remodel the single-family residence. If the detached garage is reconfigured and converted to a garage, with only a storage area in the exposed lower level, rather than removed, the petitioners must contact the Planning and Zoning Division staff to arrange for an interior inspection to verify that the garage has only a storage area in the lower level and that all interior plumbing has been removed, no later than twelve months after the issuance of a zoning permit to remodel the single-family residence.
2. Prior to the issuance of a zoning permit to remodel the single-family residence, the Environmental Health Division must certify that the existing septic system is adequate for the proposed remodeling, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance to allow the petitioners to attempt to obtain a Conditional Use Permit for an "in-law unit" not contained within a single-family residence and denial of the requested variances for the proposed changes to the garage/guesthouse building, would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Further, the continued existence of two living units on the property, even if the second living unit were limited to a guesthouse or an "in-law unit", would not be in conformance with the purpose and intent of the Ordinance on this small non-conforming lot. However, the approval of a variance to remodel a non-conforming structure in excess of 50% of its fair market value, should such a variance be necessary, to permit the garage/guesthouse to be converted into a detached garage, with a storage area in the exposed lower level, is in conformance with the purpose and intent of the Ordinance, as is the approval of a special exception and variances to permit the proposed remodeling of the single-family residence. The use of the property for one single-

family residence and a detached garage, as set forth above, will provide a reasonable use of the property that is not contrary to the public interest and consistent with other development in the area.

OTHER ITEMS REQUIRING BOARD ACTION:

BA04:096 MARK AND JEAN NOWACZYK - Reconsideration of Conditions of Approval

Mr. Dwyer *I move to reconsider the conditions of approval of our decision in the case of BA04:096, Mark and Jean Nowaczyk, from the meeting of January 12, 2005.*

The motion was seconded by Mr. Schultz and carried with four yes votes. Mr. Bartholomew abstained because he was not present at the meeting of January 12, 2005.

Mr. Ward *I make a motion to modify our decision of January 12, 2005, after reconsideration, to deny an offset variance, but approve a special exception from the accessory building floor area ratio requirement and approve variances from the floor area ratio and open space requirements, as proposed in the staff's Memo dated January 26, 2005, with the conditions listed on Page 3, with Condition No. 2 modified to read as follows:*

"The boathouse must be moved at least 8.33 ft. from the side lot line, as measured to the outer edge of the wall, with an overhang no wider than two (2) feet, which will bring it into conformance with the offset requirement. As an alternative to moving the boathouse, it may be reduced in size by removing the south wall and replacing it at least 8.33 ft. from the side lot line, with an overhang no wider than two (2) feet, provided the size of the boathouse is not reduced to less than 200 sq. ft. The boathouse must be moved or reduced in size, as stated above, no later than July 1, 2005."

The motion was seconded by Mr. Tarmann and carried with four yes votes. Mr. Bartholomew abstained because he was not present at the meeting of January 12, 2005.

The staff's recommendation, as stated in the Memorandum of January 26, 2005, was for denial of an offset variance, but approval of a special exception from the accessory building floor area ratio requirement and approval of variances from the floor area ratio and open space requirements, with the following conditions:

1. A "Preliminary Site Evaluation" of the boathouse and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of the zoning permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the boathouse, and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private

waste disposal system. If that cannot be done, a sanitary permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of the zoning permit.

2. The boathouse must be moved at least 8.33 ft. from the side lot line, as measured to the outer edge of the wall, which will bring it into conformance with the offset requirement. As an alternative to moving the boathouse, it may be reduced in size by removing the south wall and replacing it at least 8.33 ft. from the side lot line, provided the size of the boathouse is not reduced to less than 200 sq. ft. The boathouse must be moved or reduced in size, as stated above, no later than July 1, 2005.
3. Within six months of the issuance of a zoning permit for the boathouse, an updated plat of survey, showing the location of the relocated or reconfigured boathouse in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. The shed that is located partially within the road right-of-way of South Shore Dr. must be removed, prior to the issuance of a zoning permit for the boathouse.

The reasons remain as stated in the Staff Report of January 12, 2005.

BA04:097 JOHN AND RIKKI CHERBA - Reconsideration of Conditions of Approval

The Board of Adjustment Chairman determined that it was not appropriate to reconsider the conditions of approval in this case. Therefore, this matter was not discussed.

DISCUSSION OF ORDINANCE AMENDMENTS

The Board discussed recent amendments to the Waukesha County Shoreland and Floodland Protection Ordinance and to the Waukesha County Zoning Code.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 9:20 p.m.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment